

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

In an August 4, 2016 statement of accepted facts (SOAF), OWCP accepted as a factor of employment that appellant was “forced by management to conduct an excessive number of 3999’s from January 23, to June 25, 2014.” The SOAF noted that appellant indicated her working environment was stressful and she was displaced, while other supervisors, were not.

On March 21, 2017 OWCP accepted appellant’s claim for major depressive disorder, recurrent, moderate.²

On April 12, 2017 appellant filed claims of compensation (Form CA-7) for disability for the period July 9, 2014 through May 21, 2015 and August 15, 2015 through April 21, 2017, and continuing.

In a June 6, 2017 decision, OWCP denied appellant’s claims for disability for the period July 9, 2014 through May 21, 2015 and August 15, 2015 through April 21, 2017 and continuing. It explained that the claim was accepted for major depressive disorder, recurrent, moderate, and that the medical evidence of record did not provide definitive medical reasoning that supported total temporary disability due to the accepted conditions.

On March 14, 2018 appellant requested reconsideration.

By decision dated March 27, 2018, OWCP denied modification of the June 6, 2017 decision.

On April 20, 2018 OWCP issued a notice of proposed rescission, relating that acceptance of the claim for major depressive disorder, recurrent, moderate, was accepted in error. It explained that, in a March 6, 2017 report, Dr. Leonard Lawrence, a Board-certified psychiatrist, and the second opinion physician, opined that her condition was based on the perception of racial discrimination and that perception was not a compensable factor of employment. OWCP afforded appellant 30 days to submit additional evidence and argument challenging the proposed rescission action.

In a separate development letter also dated April 20, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her claim for an occupational disease. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

On May 7, 2018 appellant requested reconsideration.

² The Board notes that appellant had a prior claim for an emotional condition in OWCP File No. xxxxxx555. In that claim, appellant alleged an emotional condition on April 2, 2003. Appellant alleged extreme anxiety, panic and severe depression due to a family matter. She also alleged that management was biased in the promotion process and that she suffered harassment from her coworkers. OWCP denied the claim on September 15, 2004. On October 6, 2004 it denied modification.

In a June 18, 2018 decision, OWCP denied modification of the March 27, 2018 decision. It noted that there was not an accepted factor of employment. Therefore, any claim for wage loss would not be due to any accepted work-related condition.

On June 11, 2019 appellant, through counsel, requested reconsideration. Counsel submitted several arguments, including that the June 18, 2018 OWCP decision was erroneous as it was essentially a joint decision rescinding acceptance of the claim and denying the claim for wage-loss compensation.

By decision dated January 8, 2020, OWCP denied modification of the June 18, 2018 decision. It informed appellant that she should request that “the [c]laims examiner issue a [f]inal [d]ecision regarding the rescission or a letter that the evidence in file does not support a rescission regarding the ‘Notice of Proposed Rescission’ dated 04/20/2018.”

The Board finds that OWCP did not properly rescind acceptance of appellant’s claim.

OWCP’s June 18, 2018 decision denied appellant’s claim for wage-loss compensation on the basis that there was not an accepted factor of employment.³ However, OWCP had previously accepted the claim and did not, thereafter, follow its established procedures for issuance of a final decision regarding rescission of the accepted claim.⁴ OWCP’s procedures require a proposed and final decision rescinding the original finding.⁵ These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why acceptance of the claim should be rescinded.⁶ The Board notes that, while OWCP provided appellant with a letter on April 20, 2018 proposing to rescind her claim, OWCP did not issue a final decision establishing that it had met its burden of proof to rescind the claim. Instead, in its January 8, 2020 decision, OWCP advised appellant that she should request a final decision on rescission; however, OWCP had already denied her wage-loss compensation claim on the grounds that there was no accepted factor of employment.

OWCP did not issue a formal decision rescinding acceptance of the claim, pursuant to its procedures.⁷ Consequently, it has not met its burden of proof to rescind acceptance of appellant’s claim for major depressive disorder.⁸

³ See *B.C.*, Docket No. 17-1208 (issued August 15, 2018); *D.V.*, Docket No. 11-1629 (issued February 3, 2012).

⁴ *L.M.*, Docket No. 16-1464 (issued November 1, 2017).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.19(b) (February 2013). OWCP’s procedures further provide that such development might include requesting a medical report from the claimant’s treating physician. *Id.* at Chapter 2.1400.19(c).

⁶ See *D. P.*, Docket No. 18-1213 (issued July 30, 2020); *W.H.*, Docket No. 17-1390 (issued April 23, 2018) (OWCP must provide a clear explanation of the rationale for rescission).

⁷ *S.R.*, Docket No. 12-1404 (issued December 11, 2012).

⁸ See *S.R.*, Docket No. 09-2332 (issued August 16, 2010) (once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits; this holds true where OWCP later decides that it erroneously accepted a claim).

IT IS HEREBY ORDERED THAT the January 8, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 31, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board